

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

KYLE FRANK,

Plaintiff,

v.

ORAJEL, et al.,

Defendants.

No. 1:22-cv-00638 GSA (PC)

ORDER AND FINDINGS AND  
RECOMMENDATIONS

ORDER RECOMMENDING DISMISSAL  
FOR FAILURE TO OBEY COURT ORDERS  
AND FOR FAILURE TO KEEP COURT  
APPRISED OF CURRENT ADDRESS

PLAINTIFF'S OBJECTIONS DUE IN  
FOURTEEN DAYS

Plaintiff, a former state prisoner proceeding pro se and in forma pauperis, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

For the reasons stated below, the undersigned will recommend that this matter be dismissed for failure to keep the Court apprised of his current address and for failure to obey court orders. See ECF Nos. 10, 11. Plaintiff will have fourteen days to file objections to this order.

I. RELEVANT FACTS

Plaintiff's last interaction with the Court was on July 8, 2022, when he filed a notice of change of address with the Court. See ECF No. 9. As a result, on July 29, 2024, given the

1 amount of time that had passed and prior to screening Plaintiff's complaint, the Court ordered  
2 Plaintiff to file a notice of current address.. See ECF No. 10 (minute order). Plaintiff was given  
3 seven days to comply with the Court's order. See id.

4 Plaintiff failed to timely respond to the Court's order. As a result, on March 3, 2025, the  
5 Court issued an order directing Plaintiff to show cause why this matter should not be dismissed  
6 for failure to obey a court order. ECF No. 11. As an alternative to filing the showing of cause,  
7 Plaintiff was permitted either to file a verification of his current address with the Court, or file a  
8 notice of change of address. Id. at 2. Once again, Plaintiff was given seven days to comply with  
9 the Court's order. Id.

10 On March 13, 2025, the Court's order was returned marked, "Undeliverable, Return to  
11 Sender, Refused, Unable to Forward, Paroled." See 3/13/25 docket entry. Based on this, under  
12 the Local Rules, Plaintiff had thirty days to file a notice of change of address. To date, however,  
13 Plaintiff has not done this, nor has he requested an extension of time to do so.

## 14 II. APPLICABLE LAW

### 15 A. Federal Rule of Civil Procedure 41(b) and Local Rules 110, 182(f) and 183(b)

16 Federal Rule of Civil Procedure 41 permits this Court to dismiss a matter if a plaintiff fails  
17 to prosecute or he fails to comply with a court order. See Fed. R. Civ. P. 41(b). Local Rule 110  
18 also permits the imposition of sanctions when a party fails to comply with a court order. L.R.  
19 110.

20 Local Rule 182(f) permits service to be effective service at a prior address if a party fails  
21 to notify the Court and other parties of his address change. Id. Finally, Local Rule 183(b) gives a  
22 party who appears in propria persona a period of time to file a notice of change of address if some  
23 of his mail is returned to the Court. Id.

### 24 B. Malone Factors

25 The Ninth Circuit has clearly identified the factors to consider when dismissing a case for  
26 failure to comply with a court order. It writes:

27 A district court must weigh five factors in determining whether to dismiss a case  
28 for failure to comply with a court order: "(1) the public's interest in expeditious

1 resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of  
 2 prejudice to the defendants; (4) the public policy favoring disposition of cases on  
 3 their merits; and (5) the availability of less drastic sanctions.”

4 Malone v. United States Postal Service, 833 F.2d 128, 130 (9th Cir. 1987) (quoting Thompson v.  
 5 Hous. Auth. of City of Los Angeles, 782 F.2d 829 (9th Cir. 1986) (per curiam)).

### 6 III. DISCUSSION

#### 7 A. Rule 41(b) and Local Rules 110, 182(f) and 183(b) Support Dismissal of This 8 Case

9 Although the docket indicates that Plaintiff’s copy of the order which directed him to file  
 10 a notice of current address with the Court was returned, Plaintiff was nevertheless properly  
 11 served. It is a plaintiff’s responsibility to keep a court apprised of his current address at all times.  
 12 Pursuant to Local Rule 182(f), service of documents at the record address of the party is fully  
 13 effective. The fact that Plaintiff failed to file a notice of change of address with the Court by  
 14 itself warrants the dismissal of this matter, in accord with Rule 41(b) and Local Rules 110 and  
 15 183(b).

#### 16 B. Application of Malone Factors Supports the Dismissal of This Case

##### 17 1. Expeditious Resolution of Litigation; Court’s Need to Manage Its Docket

18 Plaintiff has been given sufficient time to file a notice of change of address with the Court.  
 19 Yet, he has failed to do so, nor has he contacted the Court to provide exceptional reasons for not  
 20 having done so.

21 The Eastern District Court has an unusually large caseload.<sup>1</sup> “[T]he goal of fairly  
 22 dispensing justice . . . is compromised when the Court is forced to devote its limited resources to  
 23 the processing of frivolous and repetitious requests.” Whitaker v. Superior Court of San

---

24  
 25 <sup>1</sup> The Eastern District of California carries one of the largest and most heavily weighted  
 26 caseloads in the nation. See Office of the Clerk, United States District Court, Eastern District of  
 27 California, 2024 Annual Report, “Weighted Filings,” p. 35 (2024) (“[O]ur weighted caseload far  
 28 exceeds the national average . . . ranking us fourth in the nation and first in the Ninth Circuit.”).  
 This problem is compounded by a shortage of jurists to review its pending matters. See generally  
id. (stating 2024 Biennial Judgeship Survey recommended request for four additional permanent  
 judgeships for Eastern District of California).

1 Francisco, 514 U.S. 208, 210 (1994) (brackets added) (citation omitted). Thus, it follows that  
2 keeping this case on the Court's docket when Plaintiff has not attempted to file a notice of current  
3 address with the Court is not a good use of the Court's already taxed resources. Indeed, keeping  
4 this matter on the Court's docket would stall a quicker disposition of this case. Additionally, in  
5 fairness to the many other litigants who currently have cases before the Court, no additional time  
6 should be spent on this matter.

7 2. Risk of Prejudice to Defendants

8 Because no viable Defendants have yet to be identified and served in this case, no  
9 defendant has put time and effort into defending against it. As a result, there will be no prejudice  
10 to anyone other than Plaintiff if the matter is dismissed. On the contrary, dismissal will benefit  
11 any potentially viable Defendants because they will not have to defend themselves against  
12 Plaintiff's complaint.

13 3. Availability of Less Drastic Sanctions; Favored Disposition of Cases on  
14 Merits

15 Finally, given that Plaintiff has had sufficient time under the Local Rules to file a change  
16 of address<sup>2</sup> since its order directing Plaintiff to file a notice of current address with the Court  
17 issued, without the filing of a notice of new address by Plaintiff, there is no less drastic option  
18 than dismissal. Although the disposition of cases on their merits is preferred, this matter cannot  
19 be prosecuted without a current address for Plaintiff and without participation by Plaintiff, nor  
20 can it be disposed of on its merits.

21 IV. CONCLUSION

22 For these reasons, consistent with Federal Rule of Civil Procedure 41(b) and Local Rules  
23 110, 182(f) and 183(b), and having considered the Malone factors, the undersigned recommends  
24 that this matter be dismissed without prejudice for failure to obey a court order and for Plaintiff's  
25 failure to keep the Court apprised of his current address. Despite the fact that Plaintiff cannot be  
26 located and that no viable Defendants have been identified and served, a period of fourteen days

27 \_\_\_\_\_  
28 <sup>2</sup> In 2025, the period that a litigant appearing in propria person has to file a notice of change of  
address was reduced from sixty-three days to thirty days. See Local Rule 183(b).

1 will be given for Plaintiff to file objections to this order. Should this order be returned to the  
2 Court marked undeliverable before the end of the fourteen-day period, the District Judge that will  
3 be assigned to this action may dismiss it immediately.

4 Accordingly, IT IS HEREBY ORDERED that:

5 1. The Clerk of Court shall randomly assign a District Judge to this action;

6 IT IS FURTHER RECOMMENDED that this matter be DISMISSED without prejudice  
7 for Plaintiff's failure to obey a court order and for his failure to keep the Court apprised of his  
8 current address. See Fed. R. Civ. P. 41(b); Local Rule 110.

9 These findings and recommendations are submitted to the United States District Judge  
10 assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
11 after being served with these findings and recommendations, Plaintiff may file written objections  
12 with the Court. Such a document should be captioned "Objections to Magistrate Judge's Findings  
13 and Recommendations," and it shall not exceed fifteen pages.

14 The Court will not consider exhibits attached to the objections. To the extent that Plaintiff  
15 wishes to refer to any exhibit, when possible, he must reference the exhibit in the record by its  
16 CM/ECF document and page number or reference the exhibit with specificity. Any pages filed in  
17 excess of the fifteen-page limit may be disregarded by the District Judge when conducting the 28  
18 U.S.C. § 636(b)(1)(C) review of the findings and recommendations. Plaintiff's failure to file  
19 objections within the specified time may result in the waiver of certain rights on appeal. See  
20 Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014); Martinez v. Ylst, 951 F.2d 1153 (9th  
21 Cir. 1991).

22  
23  
24 IT IS SO ORDERED.

25 Dated: June 2, 2025

/s/ Gary S. Austin  
UNITED STATES MAGISTRATE JUDGE